



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 28, 1998

Ms. Linda Cloud  
Deputy Executive Director  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630

OR98-0272

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 112341.

The Texas Lottery Commission (the "commission") received a request for all records concerning the employment and termination of a former commission employee. You explain that you have provided most of the requested information to the requestor. You claim, however, that three documents, labeled exhibits B, C, and D, are excepted from required public disclosure by sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

You first claim the three documents are excepted from disclosure by section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. The documents that you have submitted relate to a personnel matter, *i.e.*, the job performance of a commission employee. You may not withhold the submitted documents under section 552.111.

You also claim that exhibit D is excepted under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open

Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. You state that the document is a communication from a commission attorney to an agency official. We find that you may withhold exhibit D under section 552.107 as it reflects the attorney's legal advice or opinions.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 112341

Enclosures: Submitted documents

cc: Ms. Veve' J. Fisher  
15826 Ridgerack  
Missouri City, Texas 77489  
(w/o enclosures)